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## **Frequently Asked Questions (FAQs)**

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### **Public Access to Judicial Administrative Records—CRC 10.500 and 10.501**

December 31, 2009

Rules 10.500 and 10.501 of the California Rules of Court regarding access to judicial administrative records take effect January 1, 2010. The following Frequently Asked Questions (FAQs) are intended to assist judicial branch staff with implementing the new rules.

#### **General Questions**

##### **Q.1. What entities are subject to the requirements of the rules?**

A.1. The new rules apply to “judicial branch entities,” which rule 10.500(c)(3) defines to mean the Supreme Court, each Court of Appeal, each superior court, the Judicial Council and the Administrative Office of the Courts (AOC).

##### **Q.2. What must courts have in place by January 1, 2010?**

A.2. Rule 10.500(e)(3) requires that every judicial branch entity make available on its public Web site or otherwise publicize the procedure a requester must follow in order to request a judicial administrative record from the judicial branch entity. At a minimum, courts must publicize:

- The address to which written requests must be sent;
- The person or office to whom requests are to be directed; and
- The court’s office hours (so that people can make requests in person, and to give the public notice of the times when records may be made available for inspection).

An example of a Web site notice that includes this information is available at: [www.courtinfo.ca.gov/pubaccess.htm](http://www.courtinfo.ca.gov/pubaccess.htm).

**Q.3. What operational steps can a court take to ensure compliance with the new rules?**

A.3. The following steps can be taken to ensure compliance with the new rules:

- Identify the staff members in each division or department who will be responsible for reviewing and assigning all incoming requests;
- Create a log to track the receipt of and responses to all requests for judicial administrative records to ensure that all deadlines are met (a sample tracking log is being created by the AOC and will be available soon);
- Record the date of receipt on each request for judicial administrative records and on the tracking log;
- Keep copies of the letters or emails sent to the requester, including “initial determination” correspondence and correspondence enclosing responsive documents; and
- Record in the tracking log the date of each communication with the requester.

(In addition, see Question and Answer #21 regarding tracking of time, cost, and type of court resources spent in responding to requests.)

**Questions Regarding the Scope of the New Rules**

**Q.4. What types of records and information are covered by the new rules? What are examples of records covered by the rules?**

A.4. The rules apply only to “judicial administrative records,” defined in rule 10.500(c)(2) to mean “any writing containing information relating to the conduct of the people’s business that is prepared, owned, used, or retained by a judicial branch entity” except an adjudicative record. Judicial administrative records document how a court manages the public funds with which it has been entrusted to pay for its operational costs and include, but are not limited to, items such as baseline budget information that superior courts submit to the AOC, quarterly financial statements, revenue and reserve reports, employee salary and benefit information, copies of executed contracts with outside vendors, and final audit reports.

**Q.5. Does the form of the record affect whether it is subject to the new rules?**

A.5. No. Judicial administrative records are defined broadly to include hardcopy records, electronic records (such as e-mail) and audio or visual recordings. (See rule

10.500(c)(6).) Whether a record is subject to disclosure under the rules is determined by the content of the record as opposed to the form of the record.

**Q.6. Are there types of records and information that are *not* covered by the rules? What are examples of records *not* covered by the rules?**

A.6. Yes. The rules do not cover “adjudicative records” as defined in rule 10.500(c)(1). Adjudicative records are records that pertain to a court’s adjudicative or case decisionmaking responsibilities. These types of records include documents in a case file, records related to the assignment of cases or of judges and justices, communications between judges and staff regarding a particular case, and communications between judges regarding a court’s adjudicative functions. An existing body of law governs access to these types of records, and the rules do *not* change the existing law with respect to these records.

**Q.7. Are personal records covered by the new rules?**

A.7. No. Personal records are also not covered by the rules. The term “judicial administrative record” is defined in rule 10.500(c)(2) to exclude records of a personal nature that are not used in or do not relate to the people’s business. For example, e-mails from staff to a family member about a family matter or Outlook calendar entries for a staff member’s dentist appointment are not judicial administrative records. Because the rule only requires the disclosure of judicial administrative records, these types of purely personal records are not required to be disclosed.

**Q.8. If a record is covered by the rules, is it automatically subject to disclosure?**

A.8. No. If a record is a “judicial administrative record” it is *covered* by the rules, but may nonetheless be *exempt* from disclosure under one or more of the 12 exemptions set out in rule 10.500(f). These exemptions reflect instances when a competing public policy consideration such as personal privacy (rule 10.500(f)(3)) or security (rule 10.500(f)(6)) or the need to protect the deliberative process (rule 10.500(f)(9), (11)) outweighs the right to access otherwise public documents.

Staff should ensure that judicial administrative records being requested are not exempt from disclosure under any of the exemptions under rule 10.500(f).

The AOC is developing guidance for interpreting and applying the exemptions in rule 10.500(f) and will publicize and post these guidelines on Serranus as soon as they are available.

**Q.9. How are e-mail messages treated under the rules?**

A.9. The rules do *not* apply to e-mail or text messages sent or received before January 1, 2010. (Rule 10.500(b)(5).) Therefore, all e-mails and text messages created *before* January 1, 2010, are not required to be disclosed under the rules regardless of their content. After January 1, 2010, all e-mails that are judicial administrative records and that are not otherwise exempt from disclosure are subject to disclosure.

**Questions Regarding How a Request May be Submitted**

**Q.10. Does any general inquiry for information constitute a request or does the requester have to use some specific language to trigger application of the rules?**

A.10. There is no specific language that must be used in a request to trigger these rules. Therefore, any request for information should be treated as a request for information under the new rules. This approach ensures compliance with the rules and fosters good relations with the public and other entities, such as the media.

**Q.11. Can a court require that a request be provided in a specific format—such as in writing?**

A.11. No. The rules do not require that a request be made in writing or in a specific format. But, a may encourage requesters to put their requests in writing or on a provided form.

The AOC is developing a sample request form that courts may wish to encourage requesters to use. The sample form will be posted on Serranus as soon as it is available. If a person makes an oral request, staff should transcribe it and confirm the request with the requester.

**Q.12. Does the request need to identify a specific record? What if the request merely asks for “information”?**

A.12. Staff should first determine if staff can identify an existing record that is responsive to a request for information. If staff is unable to identify an existing record, the rules require that staff exert reasonable efforts to assist the requester in making a focused and effective request that reasonably describes an identifiable record. For example, asking the requester for additional information may help the requester and staff to identify a responsive record. Or, staff may want to describe to the requester what kinds of records are maintained that generally seem to relate to the request. If the requester is unable to identify a record despite reasonable assistance, staff should respond that it is unable to comply with the request because it does not ask for an identifiable record or information.

The following examples illustrate the types of assistance staff can provide to a requester to narrow a broad or unfocused request.

Example #1: Request for “all agenda, minutes, and meeting materials for executive committee meetings.”

*Suggestions for narrowing the request:*

- Ask the requester to describe the type or nature of information that he or she is seeking.
- Ask the requester to designate the desired time period for the meetings.
- Propose to provide the requester with a copy of the agendas (without the meeting materials) for all requested meetings (for the designated period) and have the requester indicate the minutes and meeting materials that he or she would like to receive.

Example #2: Request for “all contracts.”

*Suggestions for narrowing the request:*

- Ask the requester to describe the type or nature of information that he or she is seeking.
- Ask the requester whether it would serve his or her purpose to narrow the request by date—for example, contracts entered into during fiscal year 2008-2009.
- Ask the requester whether it would serve his or her purpose to narrow the request by contract dollar amount—for example, only contracts over \$10,000.

- Ask the requester whether it would serve his or her purpose to narrow the request by contract category—for example, only consulting contracts for information technology expenditures or contracts involving a particular facility or project.
- Propose to provide the requester with a list of contract expenditures and have the requester indicate the particular contract or contracts that he or she would like to receive.

### **Questions Regarding How to Process a Request**

#### **Q.13. What if the request seeks information that is maintained in several different records or databases? Is staff required to create a record in response to a request?**

A.13. The rules do not require a court to create a new record or to compile or assemble data in response to a request. However, the rules require that if a court can provide the requested information by selecting data from a single data source using software that it already owns or licenses, the court must comply with the request. For example, a request may ask for information that is maintained in only a few columns of an Excel spreadsheet. Creating a “new” Excel spreadsheet by deleting the unwanted columns does not constitute the creation of a new record under the rules. However, a court is not required to comply with a request if the requested information must be taken from multiple separate databases using manual data entry.

#### **Q.14. What are the required time frames for responding to a request?**

A.14. A court has 10 calendar days from receipt of the request to determine if the court has documents responsive to the request and to notify the requester of that determination. If the circumstances are unusual (for example, the records are stored off-site or the request requires searching through a large number of records to determine if there are responsive documents), the court may extend the time period for making its determination up to another 14 calendar days, but must notify the requester within the same 10-day period and state the reason the extension is necessary. A court should take only as much time as is necessary to determine if it has responsive records and cannot use the 14-day period to delay responding to the request.

Once a court has determined that it has records that are responsive to a request and that are not exempt from disclosure under the rules, the court must make the records available

“promptly.” What constitutes a prompt response to a request will depend on the facts of the specific request and what is reasonable under those circumstances.

### **Questions Regarding the Costs of Duplication, Search, and Review**

#### **Q.15. What types of costs may be charged to the requester?**

A.15. A court may charge a requester a fee representing the “direct costs of duplication.” (Rule 10.500(e)(4).) For paper copies, direct costs of duplication include the costs of paper, toner, the time of the person operating the copier, any remote storage retrieval fees, and necessary postage. The Judicial Council adopted Fee Guidelines, which provide that for basic paper copies, a fee of 10 cents per page represents the costs of paper, toner, and the time of the person operating the copier. Courts may establish fees of a different amount for the direct costs of duplication, if justified, by following the procedure stated in the Fee Guidelines. Unless the request is for a commercial use, a court may *not* charge the costs of any search and review time expended by the court in responding to a request.

If a request for records is for commercial use, a court may charge a fee representing the costs of staff search and review time, such as the time to redact a document. The new rules identify what may be included in search and review time.

(In addition, see Question and Answer #21 regarding tracking of time, cost, and type of court resources spent in responding to requests.)

#### **Q.16. Can the fee be charged in advance?**

A.16. Yes. In fact, if staff expects the fees to be significant, staff should advise the requester of the estimated fees before making any copies as it may cause a requester to reconsider or modify his or her request. Courts may also wish to establish a protocol that requires payment of fees in advance in all instances in which fees will be charged so as to avoid problems with collecting fees after records are provided.

#### **Q.17. May a court waive the fee for copying or producing records?**

A.17. Yes. The new rules allow but do not require a court to charge certain fees. For example, if the requester seeks a record consisting of only two or three pages, a court

may decide that it is not cost effective to charge the requester a fee. If a court decides that requesters will not be charged a fee for copies up to a certain number of pages, the court should apply that rule consistently.

**Q.18. May a court charge the fee specified in Government Code Section 70627(a)?**

A.18. No. Fees related to requests for judicial administrative records are stated in rule 10.500 and the Fee Guidelines. The fees specified in Government Code section 70627(a) apply to adjudicative records.

**Q.19. What kind of request is considered a request for “commercial use” for purposes of cost recovery? Is a request from the news media considered a request for commercial use?**

A.19. Rule 10.500 allows a court to charge a fee representing the costs of search and review time for requests made for commercial use. Requests from news media representatives in support of their news dissemination function are *not* considered requests for commercial use under this rule. Requests for commercial use include, for example, requests from companies that package and resell that information to the public and requests from companies that seek information about the companies’ competitors’ contracts with the judicial branch entity.

If staff is unclear about the intended purpose of a request, staff should ask the requester to explain the purpose of the inquiry.

**Q.20. Can a superior court be reimbursed for the costs of complying with requests for records?**

A.20. Yes. The Judicial Council approved a one-time allocation of \$1.5 million to reimburse superior courts for their direct costs of search and review time spent responding to requests that take more than two hours of staff time. The AOC Finance Division is developing detailed guidance for superior courts on seeking reimbursement, which will be available soon and posted on Serranus. The allocation will reimburse costs incurred between January 1, 2010, and December 31, 2011, subject to available appropriations.



**Q.21. Should courts keep track of the costs of implementation?**

A.21. Yes. Given the current fiscal situation and the absence of new funding to cover the costs of implementing the new rules, when the Judicial Council adopted the rules it also directed all judicial branch entities to maintain records regarding requests for public access to judicial administrative records and information, including the time, cost, and type of court resources spent in responding to requests received and costs recovered. This information will be collected, compiled, and analyzed by the AOC and presented to the Judicial Council by December 31, 2011.

The AOC is developing an electronic intake and tracking system for public access requests received by the AOC. To help foster consistent recordkeeping statewide so that accurate and complete information is maintained and available to support future funding requests, the system will be made available for judicial branch entities to use or adapt as they wish.

**Questions Regarding Available Resources**

**Q.22. What resources are available to the courts for implementing and complying with the rules?**

A.22. To assist the courts in implementing and complying with the new rules, the AOC is developing sample forms, templates, guidelines, and other materials and will publicize and post such materials on Serranus at [serranus.courtinfo.ca.gov/reference/publicaccess.htm](http://serranus.courtinfo.ca.gov/reference/publicaccess.htm) as soon as they become available. Materials will be revised and additional FAQs will be developed as feedback is received and the branch's collective experience grows.

The following materials are currently posted on Serranus:

- Rules 10.500 and 10.501 of the California Rules of Court
- Report to the Judicial Council (December 7, 2009) on Public Access to Judicial Administrative Records
- Rule 10.500. Public access to judicial administrative records—Fee Guidelines (December 31, 2009)
- News Release (December 15, 2009)

- CNN report: New Rules for Access to Information About Judicial Branch Administration (video)
- Frequently Asked Questions (December 31, 2009)

Ms. Linda Nguyen and Ms. Ann Springgate from the AOC Office of the General Counsel are also available to answer questions regarding requirements under the rule. Ms. Nguyen can be contacted at [linda.nguyen@jud.ca.gov](mailto:linda.nguyen@jud.ca.gov); Ms. Springgate can be contacted at [ann.springgate@jud.ca.gov](mailto:ann.springgate@jud.ca.gov).

In addition, AOC-TV will present a broadcast on January 13, 2010, for court leaders to provide information, strategies, tools, and support for implementing rule 10.500. The broadcast will feature Hon. Judith D. McConnell, Administrative Presiding Justice, Court of Appeal, Fourth Appellate District; Hon. Mary Ann O'Malley, Presiding Judge, Superior Court of Contra Costa County; Ms. Diana Herbert, Clerk/Administrator, Court of Appeal, First Appellate District; and Mr. Mike Roddy, Court Executive Officer, Superior Court of San Diego County.

**Q.23. How can courts provide input and feedback about resource materials and additional guidance and assistance that would be most helpful to the courts?**

A.23. Input and feedback from the courts are essential in order to provide helpful assistance to all courts in implementing the new rules. To facilitate input and feedback, a new email address has been established to which all comments, suggestions, and ideas can be sent: [publicaccessrule@jud.ca.gov](mailto:publicaccessrule@jud.ca.gov).

Of course, courts may also convey comments and suggestions to any of the AOC staff identified as contact persons in various related memos, and staff will consolidate comments.

In addition, the chairs of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) have included the new public access rules as an agenda item for the January 27, 2010, statewide meetings. Input and feedback about the initial reference and resource materials provided to court leaders and about what additional assistance would be most helpful to the courts in implementing the new rules will be discussed at those meetings.